APPENDIX "A"

UNITED STATES CONSTITUTION

AMENDMENT 1

[Religious and political freedom.]—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the povernment for a redress of grievances.

* * * * *

AMENDMENT 5

[Criminal actions—Provisions concerning—Due process of law and just compensation clauses.]—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

* * * * *

AMENDMENT 14

§ 1. [Citizenship—Due process of Law—Equal protection.]—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

KENTUCKY REVISED STATUTE

30.170. Court rules governing practice of law and state bar.—(1) The Court of Appeals shall adopt and promulgate rules:

(a) Defining the practice of law;

(b) Prescribing a code of ethics governing the professional conduct of attorneys and the practice of law;

(c) Establishing practice and procedure for disciplining, suspending and disbarring attorneys;

(d) Organizing and governing a bar association of the attorneys of the state to act as an administrative agency of the Court of Appeals for the purpose of enforcing such rules as are adopted and promulgated by the court under this section; providing for the government of the state bar as a

part of the judicial department of the state government, and for such divisions thereof as the Court of Appeals determines; requiring all persons practicing law in this state to be members in good standing of the state bar; and fixing the form of its organization and operation;

(e) Fixing fees upon recommendation of the board of bar commissioners to be paid for the purpose of administering this section and the rules adopted and promulgated under it, and for the collection and disbursement of such fees.

(2) The rules of court adopted and promulgated under this section shall supersede all laws or parts of law in conflict therewith, to the extent of the conflict.

(3) No rule adopted and promulgated under this section shall prevent a person not holding himself out as a practicing attorney from writing a deed, mortgage or will, or prevent a person from drawing any instrument to which he is a party. (101-1, 101-2: amend. Acts 1952, ch. 213; 1956, ch. 116; 1962, ch. 5.)

* * * * *

RULES OF THE COURT OF APPEALS OF KENTUCKY

RULE 3.130 ABA CODE OF PROFESSIONAL RESPONSIBILITY RECOGNIZED AS AUTHORITY

The Court recognizes and accepts the principles embodied in the American Bar Association's Code of

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Professional Responsibility as a sound statement of the standard of Professional conduct required of members of the bar, and the Board may cause to be tried all charges brought under this code as well as charges for the other unprofessional or unethical conduct calculated to bring the bench and bar into disrepute.

RULE 3.140 APPOINTMENT OF INQUIRY TRIBUNAL

Annually, the Chief Justice shall appoint a former judge or commissioner of the Court or a former circuit judge, a past-president of the Association, and a former chairman of the House to serve as members of an Inquiry Tribunal. One member shall be designated chairman and each shall possess the qualifications and appropriate powers of a circuit judge under a commission from the Chief Justice. The Tribunal may confer at such times as may be necessary to promptly dispose of all complaints referred to it pursuant to RCA 3.170.

RULE 3.150 PROCEEDINGS NOT PUBLIC; EXCEPTION

Nothing connected with a disciplinary case shall be made public unless ordered by the Court.

RULE 3.160 INITIATION OF DISCIPLINARY CASES

(a) Any complaint against an attorney for unprofessional conduct shall be filed with the Director who shall promptly notify the attorney by certified mail of the complaint and inform him that he has fifteen days to acknowledge receipt of the complaint or respond to the merits.

(b) Neither the Kentucky Bar Association nor any member thereof shall be liable to any member of the Bar nor to any other person charged or investigated by said Association or its officers for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial.

* * * * *

RULE 3.230 PROCEDURE WHEN ANSWER RAISES ISSUES OF FACT

If the answer raises any issue of fact the Inquiry Tribunal shall notify the Chairman in order that he may appoint an attorney to represent the Association and a Trial Committee composed of three members of the House, one of whom shall be designated Chairman, possess the qualifications of a Circuit Judge and be so commissioned by the Chief Justice. The Director shall immediately notify each member of his appointment and furnish each with a copy of the pleadings.

* * * * *

RULE 3.330 ORDER OF PROCEEDINGS AND BURDEN OF PROOF

The Trial Committee shall determine and regulate the order of proceedings at the hearing. Upon the application of a party or upon direction of the Trial Committee the Director shall issue subpoenas for the attendance of witnesses or the production of evidence. The burden of proof shall rest upon the Association in a disciplinary proceeding and the facts must be proven by a preponderance of the evidence. In reinstatement hearings the burden shall rest upon the applicant. Before submission the Trial Committee may direct such oral argument as it deems appropriate and receive briefs from all parties on such terms as it may impose. After submission of the case to the Trial Committee there shall be no further oral argument or briefing either before the Trial Committee or before the Board.

* * * * *

RULE 3.340 INTRODUCTION AND ADMISSIBILITY OF EVIDENCE, EVIDENCE TAKEN IN OTHER PROCEEDINGS

The testimony at all hearings shall be in person, except that the parties may use depositions under the same standards as those prescribed by the Kentucky Rules of Civil Procedure. The rules of evidence applicable in civil actions shall apply.

Where, in any proceeding, evidence has been taken under oath upon due notice to the Respondent, and at the taking of which Respondent has appeared, either in person or by counsel, or as attorney for any party, a duly certified transcript of all, or the essential portions, of such proceedings may be used as evidence in any hearing or in any investigation antecedent to or in connection with any disciplinary case involving the same charge or any charge growing out of matters connected therewith, and such transcript and record, or parts thereof, may be made a part of the record on any hearing or investigation.

* * * * *

RULE 3.360 TRIAL COMMITTEE TO FILE REPORT WITH BOARD

When a disciplinary proceeding has been finally submitted, the Trial Committee shall promptly file with the Board the entire transcript of the proceeding, the transcript of testimony together with such briefs as may have been filed and a written report in the nature of findings of fact and conclusions of law, which shall contain a concise statement of:

(a) the charges made against and the defense offered by the respondent;

(b) the proceedings had;

(c) the facts which the Committee deems proven by a preponderance of the evidence, the Committee's conclusions; and

(d) its recommendations as to the disposition of the case.

The Trial Committee's report shall constitute a part of the record in the case. The report shall be advisory.

RULE 3.370 BOARD'S ACTION ON TRIAL COMMITTEE'S REPORT

Upon receipt of the report of the Trial Committee the Board shall promptly consider and act upon the entire record. Only the President, the President-elect, the Vice President and the fourteen duly elected members of the Board from their respective appellate districts shall be eligible to be present, participate in, and vote on any disciplinary case. Any member who has participated in any phase of a disciplinary case submitted to the Board under this Rule, or has been challenged on grounds sufficient to disqualify a circuit judge, shall be disqualified and the Chief Justice shall appoint a member to consider and act on the case.

The Board shall decide, by a roll call vote, whether the respondent is guilty or not guilty. If the respondent be found not guilty, the Board's action is

final. If the respondent be found guilty, the Board shall then decide by a second roll call vote, the disciplinary action to be recommended. Both the finding of guilty and the disciplinary action to be recommended must be agreed upon by a majority of the members of the Board entitled to vote in the proceedings. The result of each of the two votes shall be recorded in the Board's minutes. The President shall sign and file with the Director an order setting forth the Board's action, and the Director shall mail copies of such order together with a copy of the Trial Committee's report to the parties or their counsel and to each member of the tribunal. If discipline is recommended the entire record, together with a certified bill for costs and expense incurred in the investigation preliminary to, and in the conduct of, the proceedings shall be filed with the Clerk. Any recommendation to the Court that disciplinary action be taken shall be advisory.

* * * * *

RULE 3.410 PROCEDURE IN THE COURT

Promptly upon the filing of the order as provided in RCA 3.370, the Clerk shall advance the case on the docket and shall forthwith issue a rule against the respondent returnable within twenty days after service of the rule, requiring the respondent to show cause why he should not be adjudged guilty of

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unprofessional conduct and disciplined therefor. When the respondent is proceeded against by warning order, the rule shall be deemed to have been served thirty days after the date of the making of the warning order. If response is not filed when due the Court shall enter judgment against the respondent, adjudging him guilty of unprofessional conduct and disciplining him. When a response is filed, the respondent shall furnish a bond with surety acceptable to the Clerk, conditioned that if the principal in the bond be disciplined by the Court, he will promptly pay all costs incurred in the proceeding, including those certified under RCA 3.370. If he files his response in forma pauperis no bond shall be required.

* * * * *

Editorial

The Lawyer Image

The public image of the lawyer took a nose dive with Watergate. The image was on the decline with circus antics of so called "defenders of unpopular causes".

Recently the Kentucky Court of Appeals in a disciplinary case, condemned flamboyant forensics in the court room. The respondent, in that case, had

called the County Attorney a damned liar on two occasions, paid no attention to the rulings of the Judge, badgered and harrassed a witness, was loud and boisterous, accused the Court of attempting to influence the jury against the client, and "pointed his finger at the Court in a threatening and disrespectful manner".

If we, as advocates, are to honor the law, surely our conduct in the public court room must demonstrate good manners, courtesy and etiquette as more than a mere matter of form.

No longer shall a "conviction of contempt" be sufficient disciplinary action. Surely a client's cause can be adequately espoused in a gentlemanly manner. Certainly the court room should not be a one ring circus. The Television Court Room has influenced too many young men being admitted to the Bar.

It is time to remember that a lawyer is an officer of the Court.

Chairman,
Bar Journal
Committee

Kentucky Bench and Bar
Vol. 39, No. 2 April, 1975

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APPENDIX "B"

Mandate

75 Term — January 17, 1975

THE COMMONWEALTH OF KENTUCKY,
THE COURT OF APPEALS

Kentucky Bar Association

Vs.

Richard J. Getty

Appeal from a judgment of the
In Court of Appeals
Circuit Court

It is therefore ordered that the respondent, Richard J. Getty, be and he is hereby suspended from the practice of law in this Commonwealth for a period of six months, after which time he may apply for reinstatement as provided by RCA 3.510.

It is therefore considered that the respondent is further ordered to comply with RCA 3.390.

It is further ordered that respondent be required to pay the cost in this proceeding.

A copy—Attest:

FRANCES JONES MILLS, C.C.A.
By /s/ Frances Jones Mills, D.C.
Issued April 28, 1975 (Corrected Copy Issued May 6, 1975)

* * * * * * * *

IN COURT OF APPEALS OF KENTUCKY

KENTUCKY BAR ASSOCIATION — COMPLAINANT

VS.

RICHARD J. GETTY — RESPONDENT

ORDER GRANTING STAY OF EXECUTION AND ENFORCEMENT OF MANDATE

On motion of the respondent a stay of execution and enforcement of this Court's mandate is granted for a period to and including August 29, 1975, in order that respondent may make application to the Supreme Court of the United States for Writ of Certiorari.

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Any additional requests for stay deemed necessary should be addressed to the Supreme Court of the United States.

ENTERED May 2, 1975.

/s/ Pleas Jones

Acting Chief Justice

* * * * * * *

MANDATE

75 Term — January 17, 1975

THE COMMONWEALTH OF KENTUCKY,
THE COURT OF APPEALS

Kentucky Bar Association

Vs.

Richard J. Getty

Appeal from a judgment of the
In Court of Appeals
Circuit Court

It is therefore ordered that the respondent, Richard J. Getty, be and he is hereby suspended from the practice of law in this Commonwealth for a period of one month, after which time he may apply for reinstatement as provided by RCA 3.510.

It is therefore considered that the respondent is further ordered to comply with RCA 3.390.

It is further ordered that respondent be required to pay the cost in this proceeding.

A copy—Attest:

FRANCES JONES MILLS, C.C.A.
By /s/ Frances Jones Mills, D.C.

Issued April 28, 1975

RESPONDENT'S PETITION FOR REHEARING DENIED — 4/25/75

* * * * * * *

IN COURT OF APPEALS OF KENTUCKY

KENTUCKY BAR ASSOCIATION — COMPLAINANT

V.

RICHARD J. GETTY — RESPONDENT

ORDER

Respondent's petition for rehearing is denied without prejudice to his right to proceed by motion for a stay of the order of this court in order to proceed with an appeal, or to proceed with an application for a writ of certiorari, to the Supreme Court of the United States of America.

Entered this 25th day of April, 1975.
Full court sitting. All concur.

/s/ Scott Reed
Scott Reed, Chief Justice

* * * * * * *

Rendered: January 17, 1975

IN COURT OF APPEALS OF KENTUCKY

KENTUCKY
BAR ASSOCIATION — COMPLAINANT

V.

RICHARD J. GETTY — RESPONDENT

PER CURIAM

This disciplinary matter is before the court on a recommendation that Richard J. Getty be suspended from the practice of law in this state for a period of one month, and that he pay the costs of this action.

A charge was filed against Getty by the Kentucky Bar Association on May 3, 1973, consisting of six counts relating to his conduct as defense counsel in the case of Commonwealth of Kentucky v. Lance Kohler, Fayette Circuit Court. On August 2, 1973, an additional charge was filed against Getty. This charge consisted of four counts relating to Getty's conduct as defense counsel in the cases of Commonwealth v. Campbell, Harrison County Court; Commonwealth v. Morgan, Nicholas Circuit Court; and Commonwealth v. William Highlander, Jr.,

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Nicholas County Court. On August 2, 1973, the Inquiry Tribunal ordered the two charges consolidated to be tried as a single disciplinary action. RCA 3.260. Getty filed responses to each of the charges.

A three-man trial committee appointed by the President of the Kentucky Bar Association conducted hearings in which Getty and his counsel participated. The trial committee found Getty not guilty on all charges and recommended to the Board of Governors of the association that all counts, on both charges, were not proven by a preponderance of the evidence and should be dismissed.

The Board of Governors considered the trial committee's report, reviewed the record, and recommended to this court a finding of not guilty on all counts except count 1 of the second charge. On that count, the Board of Governors recommended a finding of guilt and stated:

> "In the Harrison County Court case styled Commonwealth v. Campbell, Richard J. Getty, during his representation of the defendant Campbell at trial on or about March 27, 1973, called County Attorney John M. Keith a 'damn liar' on two occasions out of the presence of the jury. After repeated admonishment of County Judge Carl Nunnelley regarding respondent's remarks and attitude toward witness State Trooper John Conley continued his badgering

and harrassment of witness Conley. After the noon recess, respondent attempted to use a chart or card which indicated the amount of alcoholic beverage a person of a certain size could use without being under the influence of alcohol. Respondent laid no foundation for the introduction of the card into evidence. Under the repeated objection to the introduction of said evidence by County Attorney John M. Keith, respondent continued his badgering and questioning in a loud and boisterous manner, completely ignoring the court and accused the court of attempting to influence the jury against respondent's client. During this latter event, respondent pointed his finger at the court in a very disrespectful and threatening manner after being admonished by the court to desist. Respondent's conduct during the trial caused the court to declare a mistrial and find respondent in contempt of court for his boisterous haranguing and contemptuous attitude toward the court."

Getty's arguments on appeal are:

1. The findings of the trial committee as to all charges were supported by substantial evidence and conclusive of his innocence.

2. The recommendation of the Board of Governors should be set aside because it failed to submit separate findings of fact and conclusions of law contrary to those of the trial committee.

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3. The costs should be fairly apportioned.

4. His conduct was not such as to warrant punishment.

5. The Board of Governors erred in permitting counsel for the Kentucky Bar Association to be present at their meeting when Getty's counsel was not permitted to be present or heard.

This court has reviewed the 10 volumes of evidence heard by the trial committee and considered by the Board of Governors. The charge against Getty consisting of six counts relating to his conduct as defense counsel for Kohler in the Fayette Circuit Court is not supported by substantial evidence. The record is clear that the primary witness for the Kentucky Bar Association was Lance Kohler. The trial committee found that the evidence in the first six counts in the complaint was a swearing contest between Getty and Kohler. It noted that Kohler is a disbarred attorney, presently serving a sentence in the penitentiary for the sale of narcotics. In its findings of fact concerning Getty's representation of Kohler, the trial committee applied the standards enunciated by this court:

> "In general, the veracity of witnesses is to be determined by (1) their appearance on the stand, and their character insofar as their character bears upon the question of their probable willingness to lie; (2) the evidence or non-evidence of a motive for falsification; and

> (3) the collateral undisputed facts bearing upon the intrinsic probability of the truth or falsehood of the testimony given." In re Hargis, Ky., 190 S.W.2d 333 (1945).

This court deems it unnecessary to dwell upon the incredible testimony of Lance Kohler. The trial committee did not believe him. The Board of Governors found his testimony lacking. This court concurs in these findings. The allegations contained in Counts I through VI of Charge 1 were not established by a preponderance of the evidence. Therefore the action of the trial committee and the Board of Governors as to these counts was correct and this court concurs in the recommendations of the Board of Governors by a vote of 9-3 that Getty "be adjudged not guilty on the provisions of the charge filed May 3, 1973."

Before proceeding to consider the other charges against Getty, this court reaffirms its position with respect to the roles of a trial committee and the Board of Governors in a disciplinary proceeding.

> "The report and recommendations of the trial committee are only advisory to the Board of Governors, as are the Board's recommendations to this court. RCA 3.400, 3.420 (now RCA 3.360, 3.370). This means, of course, that in the end this court must be judge of the factual issues and of the final action to be taken. The role of fact-finder is neither welcome nor comfortable to

an appellate court, but obviously we have saddled it upon ourselves by our own rules for this type of proceeding." Kentucky State Bar Association v. Stivers, Ky., 475 S.W.2d 900 (1972).

Count No. I of Charge 2 concerned the conduct of Getty in his representation of Alvin Campbell in the Harrison County Court. Campbell was charged with operating a motor vehicle while intoxicated. The trial committee complacently referred to the incident of Getty's calling the County Attorney a damned liar on two occasions as "lawyer to lawyer argument" and "if every attorney who said these words to another attorney was charged, we would all be respondents." The trial committee placed this inicdent in the same category as the gag which says: Two lawyers castigate each other. The one calls the other an unmitigated liar. The other retorts, "you're an idiotic scoundrel." Whereupon the judge says, "now that the attorneys have identified each other, let's proceed with the case."

This court does not view the conduct of Mr. Getty so lightly. On that occasion Getty not only called the County Attorney a damned liar on two occasions, but his conduct toward the County Judge was reprehensible. Getty paid no attention to the rulings of the judge. He badgered and harrassed a witness. He was loud and boisterous. He accused the court of attempting to influence the jury against his

client. He approached the bench, and within a very short distance from the judge pointed his finger at the court in a threatening and disrespectful manner. Getty's conduct during the trial caused the court to declare a mistrial. The judge found Getty in contempt for his boisterous and contemptuous attitude.

Such misconduct as shown by Getty and his bad deportment give the profession of law a bad image. There is no place in any courtroom for such flamboyant forensics. No attorney should show such calloused disregard and lack of respect for a presiding judge. Any attorney should know that good manners, courtesy and etiquette in the courtroom are more than a matter of form. These are the components which help prevent a trial from deteriorating into a brawl. A lawyer must not be guilty of such conduct which violates the admonition contained in the Code of Professional Responsibility. Conon I, DR 1-102(a)(5),(6). Getty's conduct is in violation of the stated disciplinary rules adopted by this court as a sound statement of the standard of professional conduct required of members of the bar.

The Board of Governors by a 9-2 vote adjudged Getty guilty of unprofessional conduct on Count I of Charge 2 and recommended that he be suspended from the practice of law in Kentucky for a period of one month and required him to pay the costs of this action. The Board of Governors concurred in the

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findings of the trial committee as to Count Nos. II, III and IV of Charge 2.

Count II. Getty was charged with unprofessional conduct in the Nicholas County Circuit Court during his representation of the defendant, Morgan, on October 6, 1972. The evidence reveals the same pattern shown in Count I. Getty was continually reprimanded by the court for interrupting the Commonwealth's Attorney in the presentation of the Commonwealth's case. At the noon recess he was abusive toward the County Attorney. He followed the Commonwealth's Attorney into the County Attorney's office and grabbed him by the left shoulder. The trial committee, in its findings of fact as to this charge, stated: "It appears to the committee that the general demeanor of all counsel, both in and out of the court room, was one of antagonism toward each other. Further, the testimony indicates that in this section of the state such conduct is the norm and is somewhat expected." This court is of the opinion that such is not the norm. If it is, the norm will have to be upgraded. Getty's conduct on this occasion is not conducive to the efficient administration of justice, and such action when called to the attention of this court will not be tolerated.

Count III. Getty was charged with unprofessional conduct during his representation of William Highlander in the Nicholas County Court. The

evidence reveals the same pattern of conduct on the part of Getty as was shown on Charges I and II. He attempted to disrupt the court proceedings and was admonished by the County Judge. During a recess, Getty became abusive toward a witness.

Count IV. Getty accused the court reporter of not properly transcribing her notes in the Highlander case. He also accused the County Attorney of Nicholas County of influencing the transcription of her notes.

Plato wrote in 400 B.C., in *The Laws:*

> ". . . If justice be noble, how can we deny that pleading is a noble thing."

If a lawyer truly fulfills his role as an adovcate, he can then measure up to that famous toast by Daniel Webster:

"The Law: It has honored us; may we honor it." Getty's misconduct in the courtroom indicates that he failed to honor the law. He failed to measure up to the rules required of him.

Getty's argument that irregularities occurred in the conduct of the proceeding by the Board of Governors in permitting counsel for the Kentucky Bar Association to be present when his attorney was not permitted to be present is refuted by the record. It is established by the record that the Board of Governors adhered to the rules of this court.

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This court rejects Getty's contention that the punishment he received from the contempt order was sufficient. Punishment for contempt is not a prohibition of disciplinary proceedings. A prior conviction for contempt adds force to the need for discipline. Getty's contention that the recommendation of the Board of Governors should be set aside because it failed to submit separate findings of fact has no merit. There are no rules of this court that require such action. RCA 3.390.

This court is unanimous in the opinion that the charges contained in Counts I through IV of Charge 2 are sustained by a preponderance of the evidence. The consensus among the members of the court is that Richard J. Getty be suspended from the practice of law in this state for six months and that costs be assessed as provided by RCA 3.450(a) and RCA 3.370.

It is ordered that Richard J. Getty be suspended from the practice of law in this Commonwealth for a period of six months, and he is required to pay the costs of this proceeding.

All concur.

ATTORNEY FOR COMPLAINANT:
Leslie G. Whitmer, Director
Kentucky Bar Association
Capitol Building
Frankfort, Kentucky 40601

ATTORNEYS FOR RESPONDENT:

Raymond Francis Connell
326 Main Street
Paris, Kentucky 40361

Robert J. McDaniel
326 Main Street
Paris, Kentucky 40361

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COURT OF APPEALS OF KENTUCKY

KENTUCKY BAR ASSOCIATION — COMPLAINANT

V. AMENDMENT TO BOARD ORDER

RICHARD J. GETTY — RESPONDENT

* * *

Comes now the Kentucky Bar Association, by counsel, and amends the Order of the Board dated July 20, 1974, to correct an error in the second literary paragraph of the Order to make it conform to the Finding. The second literary paragraph should read:

"On call of the roll, the Respondent was adjudged not guilty as charged by a vote of 9-3 concerning the allegations of the charge filed on May 3, 1973, and guilty on the provisions of the charge filed on August 2, 1973, with the exceptions stated below, by a vote of 9-3. Upon a second roll call, by a vote of 9-2, it was recommended that the Respondent be suspended from the practice of law in Kentucky for a period of one month. Mr. Klette was absent when the second roll call was made."

/s/ Leslie G. Whitmer
Leslie G. Whitmer, Counsel
Kentucky Bar Association
243 State Capitol
Frankfort, Kentucky 40601
Attorney for Complainant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Amendment to Board Order was mailed to Mr. Raymond Francis Connell, 326 Main Street, Paris, Kentucky 40361; Mr. Robert J. McDaniel, 226 Main Street, Paris, Kentucky 40361; and Mr. Richard M. Compton, 100 S. Broadway, Georgetown, Kentucky 40324, Attorneys for Respondent, this 5 day of August, 1974.

/s/ Leslie G. Whitmer
Leslie G. Whitmer, Counsel

* * * * * * *

MEETING
BOARD OF GOVERNORS
JENNY WILEY STATE PARK
PRESTONSBURG, KENTUCKY
JULY 20, 1974

The next order of business concerned the charge against Richard J. Getty. The Trial Committee composed of Robert E. Wohlwender, Chairman; Richard S. Nelson and Rodney S. Bryson having tendered a written Report recommending that the Respondent be adjudged not guilty of unprofessional conduct, on motion duly made, seconded and passed, the Report was ordered filed.

On call of the roll, the Respondent was adjudged guilty as charged by a vote of 9-3 concerning the

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allegations of the charge filed on May 3, 1973, and guilty on the provisions of the charge filed on August 2, 1973, with the exceptions stated below, by a vote of 9-3. Upon a second roll call, by a vote of 9-2, it was recommended that the Respondent be suspended from the practice of law in Kentucky for a period of one month. Mr. Klette was absent when the second roll call was made.

IN RE: RICHARD J. GETTY

FINDINGS AND RECOMMENDATIONS OF THE BOARD OF GOVERNORS

The above case having been called and a report having been submitted and approved and the matter having been fully considered, the following finding and recommendation is made:

FINDING

That the Respondent, Richard J. Getty, be adjudged not guilty on the provisions of the charge filed May 3, 1973, and guilty on the charge filed August 2, 1973, with the exception that the Board of Governors concurs with the trial committee that the facts alleged in Paragraphs II, III and IV and the first literary sentence in Paragraph I of the August 2, 1973, charge are not sustained by the evidence. A motion to allocate costs was rejected.

RECOMMENDATION

It is respectfully recommended to the Court of Appeals of Kentucky that Richard J. Getty be suspended from the practice of law in Kentucky for a period of one month and required to pay the costs in this action.

This July 20, 1974.

/s/ Viley O. Blackburn
Viley O. Blackburn,
President

ATTEST:

/s/ Leslie G. Whitmer
Leslie G. Whitmer, Director

* * * * * * *

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RECEIVED
Jul. 3, 1974
KY. BAR ASSN.

COURT OF APPEALS OF KENTUCKY

KENTUCKY BAR ASSOCIATION — COMPLAINANT

-vs-

RICHARD J. GETTY — RESPONDENT

REPORT OF TRIAL COMMITTEE

STATEMENT OF CHARGES

The initial six charges against the respondent were filed by the complainant on May 3, 1973 and alleged unethical conduct on the part of respondent during the course of representing Lance Kohler on a criminal charge in the Fayette County Circuit Court, Indictment Number 9150, as follows:

I. That respondent in an attempt to file a Motion to remove Circuit Judge N. Mitchell Meade from the bench in the case, drafted and presented to Lance Kohler a false and fraudulent affidavit for Kohler's signature containing statements, invented by respondent, which would be embarrassing to the presiding Judge. Kohler refused to sign the affidavit.

II. That respondent, in an attempt to force and coerce Judge Meade to vacate the bench, in closed chambers confronted Judge Meade with false statements allegedly made by Kohler, but invented by respondent, concerning Judge Meade which would embarrass the Judge. The statements were not made by Kohler to respondent and were misrepresentations invented by respondent.

III. That while in conference with Kohler in the Fayette County Jail, respondent gave Kohler a loaded firearm stating that if Kohler wanted to escape, he could hold the firearm to respondent's head and they would open the front door and let Kohler out. Kohler refused the offer and returned the firearm to respondent.

IV. That while in conference with Kohler on October 4, 1971, respondent informed Kohler that respondent had a brother of a client who was hospitalized in Lexington, Kentucky and respondent was going to call him as a witness for the sole purpose of having Kohler's case continued to a later day.

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V. That respondent advised and/or sought to force Kohler to testify that Kohler had called Lexington City Police Officer Thornton five or six times on June 3, 1971 knowing at that time that Kohler had made only one call to Thornton on that day.

VI. That respondent requested Kohler to solicit legal business for him at the place of Kohler's imprisonment to help cover respondent's costs in representing Kohler.

VII. In the Harrison County Court case styled *Commonwealth* vs. *Campbell*, respondent Richard J. Getty, during his representation of the defendant Campbell at a trial on or about March 27, 1973, called County Attorney John M. Keith a "damn Liar" on two occasions out of the presence of the jury. After repeated admonishment of County Judge Carl Nunnelley regarding respondent's remarks and attitude toward witness State Trooper John Conley continued his badgering and harrassment of witness Conley. After the noon recess, respondent attempted to use a chart or card which indicated the amount of alcoholic beverage a person of a certain size could use without being under the influence of alcohol. Respondent laid no foundation for the introduction of the card into evidence. Under the repeated objection to the introduction of said evidence by County Attorney John M. Keith, respondent continued in his badgering and

questioning in a loud and boisterous manner, completely ignoring the court and accused the court of attempting to influence the jury against respondent's client. During this latter event, respondent pointed his finger at the court in a very disrespectful and threatening manner after being admonished by the court to desist. Respondent's conduct during the trial caused the court to declare a mistrial and find respondent in contempt of court for his boisterous, haranguing and contemptuous attitude toward the court.

VIII. In the Nicholas County Circuit Court case of *Commonwealth* vs. *Morgan*, Respondent Richard J. Getty, during his representation of the defendent, Morgan, on or about October 6, 1972, was continually reprimanded by the court for his arrogant, abusive attitude; for continually interrupting the Commonwealth's Attorney in the presentation of the Commonwealth's case; and refusing to listen to objections made by the Commonwealth's Attorney. At the noon adjournment in the small lobby of the courtroom, respondent became abusive toward Nicholas County Attorney Charles Cox who assisted in the prosecution of the Morgan case and accused said Cox of tampering with the witnesses in the case before October 6, 1972. Following this event, respondent followed Commonwealth's Attorney G. L. Tucker into the office of said Cox and continued to harrass and make abusive statements to the Commonwealth's Attorney. During this latter

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conversation, respondent grabbed the Commonwealth's Attorney by his left shoulder.

IX. In the Nicholas County Court case styled *Commonwealth* vs. *William Hilander, Jr.*, Respondent Richard J. Getty, during his representation of the defendent, Hilander, at an examining trial on or about December 11, 1972, attempted to disrupt the court proceeding which resulted in an admonishment to respondent from County Judge Lloyd Clark concerning his decorum in the courtroom. At the noon recess the court threatened to discontinue the examining trial completely. During a short intermission in the proceeding, respondent became abusive to State Police Detective Charles Seay in the County Judge's office nearly resulting in a physical fight with the detective.

X. Respondent had engaged the services of Nancye R. Lyons, secretary to the Nicholas County Attorney, to make a transcript at the examining trial in *Commonwealth* vs. *William Hilander, Jr.*, Nicholas County Court. When said Lyons refused to give respondent the transcript until he had paid for the same, respondent subsequently accused Lyons of not having properly transcribed her notes and accused County Attorney Charles M. Cox of influencing her transcription of said notes, both of which accusations are misrepresentations.

STATEMENT OF DEFENSES

As to charges I and II, respondent denies that the incidents involved were created or suggested by respondent, but rather were created and suggested by Kohler and that respondent merely advised Judge Meade of what Kohler wanted to do and what Kohler wanted respondent to do.

As to Charges III, IV, V, VI, VII, VIII and IX, respondent categorically denies same; as to Charge X, respondent admits he hired Mrs. Lyons and that she would not turn over the transcript until she was paid, and denies all other parts of the Charge.

STATEMENT OF PROCEEDINGS

Your Trial Committee met at Lexington, Kentucky, and conducted its hearings November 26, 1973 through November 29, 1973. Forty-two witnesses were heard concerning all charges. Testimony of witnesses and documentary evidence was duly presented by the complainant who was represented by the Honorable Harris C. Rhodes. Testimony of witnesses and documentary evidence was presented by the Honorable Raymond Connell and the Honorable Robert McDaniel on behalf of the respondent. Each party was permitted to cross examine witnesses for the other party, all witnesses were sworn, examination was further conducted by the members of the Trial Committee and closing

statements were made by counsel for the respective parties. A stenographic transcript of the proceedings was made consisting of 1047 pages and was thoroughly reviewed by your Trial Committee. Further, 1628 pages of Trial transcripts introduced into evidence were reviewed.

STATEMENT OF FINDINGS OF FACT

As to Charges I and II, four witnesses' testimony is deemed worth of comment, although the testimony of other witnesses has not been disregarded by the Trial Committee. Lance Kohler must be considered the primary witness for the complainant on these charges, he testified substanially as the charges alleged, and that the incidents described in the charges occurred and are true. It is specifically noted that as to charges III, IV, V and VI, the only evidence pertaining thereto presented by the complainant was and is the testimony of Kohler. The Trial Committee believes that the only relevant evidence concerning charges III and IV by the respondent would be the testimony of the respondent himself. As to those charges, where the only evidence is the testimony of one individual against another individual, the decision of fact as to the truthfulness and the occurrence of the incidents involved in those charges, rests solely upon determination of the credibility of the witnesses.

As to charges I and II, in addition to the testimony of Kohler, the testimony of Judge Meade and the testimony of James J. Varellas, Jr., are determined particularly pertinent. Kohler testified again substantially as the charges alleged. Judge Meade testified that the respondent confronted him with the alleged fact that Kohler wanted to file a false affidavit to force Judge Meade to vacate the bench and further confronted Judge Meade with other false statements in the Judge's chambers allegedly originating with Kohler. Each of these incidents clearly occurred but the question involved in both is not whether they occurred, but whether the idea of the affidavit and the attempt to embarris Judge Meade were Kohler's desire and intent or whether the desire and intent originated with the respondent. Judge Meade did not know the answer to this question, respondent claims the intent and idea was solely that of Kohler and he merely brought it to the Court's attention and Kohler claimed he did not initiate or suggest this and the idea was solely that of respondent.

As to Charges I and II, it initially would appear that again, the decision as to those changes would be one of the credibility of Kohler versus Getty. However, the testimony of James J. Varellas, Jr., bears relevance as to these charges.

At page 140 of the Transcript of Evidence, Kohler testified that he had no knowledge of the Sears

woman whatsoever. This woman becomes important because the alleged attempt to embarrass Judge Meade is based upon a claim that Judge Meade and Kohler were vying for the affections of the Sears woman. Mr. Varellas at Page 231 of his testimony in the Transcript of Evidence stated that Kohler told him that he (Kohler) could not get a fair trial because Judge Meade and Kohler had been seeing the same young lady. This is in direct conflict with the statement of Kohler that he never heard of the Sears woman.

The Trial Committee further notes that Mr. Kohler is a disbarred attorney, is presently serving a sentence in the Kentucky State Penitentiary for sale of narcotics and therefore is a convicted felon (Page 145 of Transcript of Evidence) and has been committed to a mental hospital (Page 144 of Transcript of Evidence).

A number of witnesses testified as to the reputation for truth and veracity of the respondent and of Kohler. In each instance, the respondent was said to have a good reputation for those traits and Kohler had a bad reputation for those traits and Kohler had a bad reputation for same.

Further, a member of the Trial Committee attempted to determine whether Mr. Kohler had any motive for falsifying his testimony with a view toward a possible "1142" motion. At Page 103 of the Transcript of Evidence, Kohler testified that he may

filed an "1142" and then refuse to answer that question on the grounds of self-incrimination. Later, on Page 159 in the Transcript of Evidence, stated he would not file an "1142".

In the case of *In Re Hargis*, Ky., 190 SW2d 33, a disciplinary proceeding against an attorney, the Court of Appeals stated at pages 334-335;

> "In general, the veracity of witnesses is to be determined by (1) their appearance on the stand, and their character in so far as their character bears upon the question of their probable willingness to lie; (2) the evidence or non-evidence of a motive for falsification; and (3) the collateral undisputed facts bearing upon the intrinsic probability of the truth or falsehood of the testimony given."

Applying these standards to the case at Bar, the Trial Committee concludes that it does not believe Lance Kohler. The Trial Committee further finds that except for Kohler's testimony, there is absolutely no other evidence to substantiate charges I through VI.

Your Trial Committee finds, therefore, that the allegations contained in those charges are not proven by a preponderance of the evidence.

As to Charge VII, this portion of the investigation of the Trial Committee delves into the activities of Mr. Getty concerning his representation of one Alvin Campbell in the Harrison Quarterly

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Court, on a charge of Driving a Motor Vehicle while Intoxicated.

It was alleged that Mr. Getty practiced the case in such a manner as to constitute unethical conduct and his actions were calculated to bring the Bench and the Bar of Kentucky into disrepute — Mr. Getty denied this.

At the outset, it occurs to the Trial Committee that the actions of Mr. Getty during the Campbell Trial were in a situation which was under the jurisdiction of a Court, and of a judge. Misconduct of the respondent could be, and was, punished by a contempt ruling. It is the obligation of any judge to run his Court in an orderly manner, and said judge has the power to do this. If the Judge of a court uses his powers of contempt, and still feels that additional methods should be utilized, he has every right to institute charges against the offender to the Bar Association. This was not done by this judge, nor the prosecuting attorney, in the Campbell case (Trial Comm. Transcript P. 469). It appears that the County Attorney, Mr. John Keith, was contacted by a spokesman for the Bar Association, and asked to prepare an Affidavit (T.C. 469). He then prepared a joint Affidavit for Judge Nunnelley and himself (T.C. 476).

It is conceivable that an attorneys' course of conduct could be so outrageous in a courtroom that he should be brought up on charges before the Bar

Assoication. It is the opinion of this Trial Committee that Mr. Getty's actions were not of that caliber.

The accusing testimony amounted to this: "Harrassing and haranguing" — "Repetitious" (T.C. Keith, 444, 447, 448); "Argue with judge on rulings" "Shook his finger at Judge" "Loud" (T.C., Connelly, 527, 528, 542); "Judge unable to maintain dignity of Court" (T.C., Connelly, 529); "Loud arguments - threatening - shook finger at Judge" (T.C., Arnold, 606, 607, 608); "Loud, Repetitious, Shook Finger, wouldn't listen to Court rulings" (T.C., Nunnelley, 376, 377, 378)

The respondent's witnesses: "No finger waving, saw nothing wrong, both attorneys loud" (T.C., Curtis Jones, 558, 562, 571); "Didn't see Getty do anything wrong" (T.C. Rosa Jones, 621); (T.C. Campbell, 627).

There was an appeal from the Order of Judge Nunnelley holding Mr. Getty in contempt, and a trial de novo was held in the Harrison Circuit Court. The prosecution put on the same witnesses as were heard by this Trial Committee, except that deputy Sheriff James Haggard testified in the Harrison Circuit Court. "Shook finger at Judge - threatening manner - I stook up, but nothing came of it" (Appeal Transcript, Haggard 74, 75)

Additional respondent witnesses called in the Harrison Circuit Court were: Ralph Beckett and Alex Coleman, both members of the jury in the Quarterly

Court Campbell case. "No name calling - no threats to Judge" (A.T., Beckett, 125, 126) "Uproar - confusion all involved" (A.T., Beckett 127, 129); No treats - no insults" (A.T., Coleman, 130)

In any event, while Mr. Getty's conduct may have substantiated a contempt ruling, it does not go to the lengths to be punished by the Bar Association, in the opinion of this Committee.

While the Court of Appeals has stated:

> "Frequent and repeated punishment for contempt of Court indicates that lawyer is not fit to practice law."
>
> (Kentucky State Bar Association vs. Daniel Taylor, 1972, 482 SW2d 574).

It appears that respondent herein was cited for contempt but once.

The incident of Mr. Getty calling Mr. Keith a "damned liar", while showing a lack of good taste and a lack of professional detachment (which, it appears, Mr. Getty does lack) can have no place in these proceedings for the following reasons:

1. This was a lawyer to lawyer argument, which occurs often. If every attorney who said these words to another attorney was charged, we would all be respondents.

2. This argument was out of the courtroom and more-or-less in private.

Your Committee concludes that Charge VII has not been proven to be of an extent which should be punished, and should be dismissed.

As to Charge VIII, concerning the Morgan trial and the episode in Mr. Cox's office, your Committee finds that The Honorable John P. Lair, Judge of the Nicholas Circuit Court did not hold respondent in contempt of Court for actions during the trial of said case;

That the testimony is conflicting as to what took place outside the courtroom during the trial of the above action. It is evident from the record in this hearing that the attorneys were emotionally involved. Further, it is evident that these strong feelings carried over during the noon recess. However, the Committee is aware that such conduct is not uncommon. The trial of any case, and especially a criminal case, is an adversary hearing. The friction generated in the area of battle usually does not cool at the courtroom door.

Respondent's conduct is to be measured against the standard of whether his conduct was calculated to bring the bench and bar of Kentucky into disrepute. (3.130).

The testimony of Mr. Tucker and Mr. Cox (p. 649) indicates that respondent's conduct was so calculated. The testimony of Mr. Williams, a somewhat informed, disinterested layman, testified that respondent conducted himself in court, just as

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an attorney should (p. 672). Further, Mr. Williams stated that he did not have first hand knowledge of the alleged "shoving" incident between Cox, Tucker and respondent; and, that to his knowledge, no juror had such personal knowledge. (p. 675)

It appears to the Committee that the general demeanor of all counsel, both in and out of the court room, was one of antagonism toward each other. Further, the testimony indicates that in this section of the state such conduct is the norm and is somewhat expected.

Also, the presiding Judge did not hold respondent in contempt of court and as presiding Judge, he is the party who determines what consititutes arrogant and abusive courtroom conduct.

The Committee concludes that the obligations contained in charge number eight are not supported by a proponderance of the evidence and that respondent's conduct was not calculated to bring the bench and bar of Kentucky into disrepute.

As to Charge IX as to the Hilander Trial and Detective Seay episode, your Committee finds all the participating parties agree the respondent is a very persistent individual and one who is not afraid to "rock the boat" if he believes it in the best interest of his client. (p. 752) However, when the question was asked the presiding Judge, Floyd Clark, if respondent's courtroom conduct warranted contempt action, the Judge replied negatively. (p. 768, 773 &

774). Mr. Cox disagreed. (p. 785). In Detective Seay's opinion, the entire court proceeding was unorderly. (p. 796). Mr. Hilander contradicted Detective Seay and testified respondent did not threaten Seay. (p. 805). Mr. Sam's testimony indicates that Judge Clark wanted respondent to tell Seay to return to the courtroom. (p. 818). Chief Earlywine agreed. (p. 824).

The Court did not hold respondent in contempt. (p. 768) As presiding Judge, he certainly could have so acted had he believed it necessary under the circumstances.

The Committee concludes that the evidence heard pertaining to charge number nine is extremely contradictory. However, we conclude that the obligations are not supported by a preponderance of the evidence and further, that respondent's conduct was not calculated to bring the bench and bar of Kentucky into disrepute.

As to Charge X, the Nancye Lyons episode, the Committee deems proven the facts that respondent ordered the transcript for his personal use and that Lyons refused to release it to him until paid. Further, Lyons was paid. (p. 837)

The Committee concludes that a contract was entered into between respondent and Lyons for the preparation of the transcript. Subsequently, a disagreement arose as to it and the manner of payment.

The Committee concludes that the allegations contained in charge number ten, which were denied by respondent, even if supported by a preponderance of the evidence, were not calculated to bring the bench and bar of Kentucky into disrepute.

STATEMENT OF CONCLUSIONS

Based upon the foregoing Statement of Findings of Fact as to charges I through X, your Trial Committee concludes that charges I through X were not proven by preponderance of the evidence and same should therefore be dismissed.

Respectfully submitted,

/s/ Robert E. Wohlwender
Chairman

/s/ Richard S. Nelson
Member

/s/ Rodney S. Bryson
Member

COURT OF APPEALS OF KENTUCKY

KENTUCKY BAR ASSOCIATION — COMPLAINANT

V.

RICHARD J. GETTY — RESPONDENT

* * *

This is to CERTIFY that the Board of Governors of the Kentucky Bar Association has expended the following sums in the above-styled case:

November 27, 1973	Charles A. Wilson	$ 41.90
November 13, 1973	W. R. Dollins	6.00
November 26, 1973	Carlton T. Nay	2.40
November 26, 1973	Webber Davis	5.00
November 30, 1973	Leslie G. Whitmer	65.63
December 4, 1973	Harris C. Rhodes	48.11
December 5, 1973	Robert E. Wohlwender	141.38
January 30, 1974	Richard S. Nelson	138.24
February 6, 1974	Rodney S. Bryson	98.14
March 5, 1974	Betty J. Dobson	1,684.00
March 6, 1974	Mildred Lielke	164.00
	TOTAL	$2,394.80

DATED: July 29, 1974

/s/ Leslie G. Whitmer
Leslie G. Whitmer, Director